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In The
United States Court of Appeals
For The Federal Circuit

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U.S. PATENT & TRADEMARK OFFICE

IN RE JACK RICHARD SIMPSON

**APPEAL FROM THE UNITED STATES PATENT AND
TRADEMARK OFFICE, BOARD OF PATENT APPEALS AND
INTERFERENCES**

**BRIEF OF APPELLANT
JACK RICHARD SIMPSON**

Larry L. Coats
Edward H. Green, III
COATS & BENNETT
1400 Crescent Green
Suite 300
Cary, North Carolina 27511
(919) 854-1844

Dated: September 30, 2002

Counsel for Appellant

CERTIFICATE OF INTEREST

Counsel for the Appellant, Jack Simpson, certifies the following:

1. The full name of every party or amicus represented by me is:

JACK SIMPSON, an individual, and
CONATINER GRAPHICS CORPORATION

2. The name of the real party in interest represented by me is:

CONTAINER GRAPHICS CORPORATION

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

NONE

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

COATS & BENNETT, PLLC, Larry L. Coats and
Edward H. Green, III

Dated: September 30, 2002

Larry L. Coats

Larry L. Coats

Counsel for Appellant

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I. STATEMENT OF RELATED CASES

There are no related cases.

II. JURISDICTIONAL STATEMENT

On May 22, 2002 the United States Patent and Trademark Office (PTO) Board of Patent Appeals and Interferences (Board) issued a decision in Appeal No. 2001-0312 relating to U.S. Patent Application Serial No. 09/054,564 (the '564 application). The Board found that claim 1, 3, 5, 8, 9, 28 and 29 were unpatentable under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,636,559 to Smithwick, Jr., et al. Under 35 U.S.C. §134 the Board had jurisdiction to hear the matter.

Jack R. Simpson, the Applicant in the '564 application, on July 18, 2002 filed a timely Notice of Appeal in the United States Court of Appeals for the Federal Circuit. This Court has jurisdiction to hear the present Appeal under 35 U.S.C. §144. This Appeal is from a final order that disposes of all claims.

III. STATEMENT OF THE ISSUES

Whether claims 1, 3, 5, 8, 9, 28 and 29 of the '564 application are unpatentable under 35 U.S.C. §102 (e) as being anticipated by Smithwick, Jr. et al., U.S. Patent No. 5,636,559.

IV. STATEMENT OF THE CASE

On March 3, 1998, Mr. Simpson filed the '564 application entitled "Trim Edge Stripper for a Corrugated Board Rotary Cutting Die". The Examiner rejected all of Mr. Simpson's claims as being unpatentable and anticipated in view of Smithwick. Thereafter Mr. Simpson appealed the rejection of claims 1-35 to the Board. After Mr. Simpson filed his Opening Brief with the Board, the Examiner withdrew the rejection of claims 2, 4, 6, 7, 10-27 and 30-35. This left claims 1, 3, 5, 8, 9, 28 and 29 for review by the Board.

On May 22, 2002 the Board issued a decision upholding the Examiner's rejection of claims 1, 3, 5, 8, 9, 28 and 29 as being anticipated by Smithwick. Mr. Simpson appeals from this decision of the Board.

V. STATEMENT OF FACTS

A. MR. SIMPSON'S INVENTION

Mr. Simpson's invention is a rotary cutting die 30 for producing corrugated board products such as corrugated boxes.¹ As will be detailed later, the rotary cutting die is provided with a series of trim strippers 10 that engage pieces of trim 62 cut from a blank corrugated board, referred to by

¹ Die 30 is suitable for manufacturing different corrugated board products. Corrugated boxes constitute the vast majority of products manufactured by such dies. Therefore, in discussing the present invention, the end product is simply referred to as a corrugated box.

the letters CB, and direct the cut trim pieces away from the rotating die.

A23-24, 51-55. Before discussing the die and the trim strippers, it is beneficial to review the conventional process for forming corrugated boxes.

The process begins with an initial blank corrugated board CB. A53-55, 57-58, and 60-61. Corrugated board CB is fed into the nip 80 of the rotary die 30. A number of separate and distinct operations are performed on the corrugated board CB by the die. First, the die trims the corrugated board CB. That is, the die cuts relatively narrow strips of trim 62 from the edges of corrugated board CB. In most cases, the corrugated board CB is rectangular and trim is cut from all four edges. However, in some cases, trim may only be cut from two edges, for example, the leading and trailing edges. In any event, once the strips of trim 62 are cut, what is left is referred to as the product board or product portion. A11, 91. That is, the product portion is the initial corrugated board CB minus the pieces of trim 62 that have been cut therefrom. It is the product portion from which the corrugated box is made.

In addition to trimming the corrugated board CB, the die 30 performs additional operations on the remaining product portion. Essentially the die 30 cuts, creases and scores the product portion such that it can eventually be

expanded and the components folded and glued to form a corrugated box.

A23.

Trimming the corrugated box CB is an important step. By trimming the corrugated board CB the dimensions of the product portion are fixed. This allows the corrugated box manufacturer to precisely control the dimensions of the product portion and hence the dimensions of the various sides and panels of the box. If the corrugated board CB was not trimmed, then the initial edges of the corrugated board CB would form edges of the box and it would be difficult to precisely locate the position of the various cuts and scores on the product portion relative to the outer edges. Additionally, trimming the corrugated box CB ensures that the product portion includes square corners and straight edges.

Mr. Simpson's invention focuses on cutting the trim pieces 62 and controlling the movement of the trim pieces away from the die. A20-21. It is important to quickly and efficiently move the cut trim pieces 62 from the die so as to make sure that the cut trim pieces do not become intermingled with the finished product portion. When such intermingling happens, packagers and even consumers can find pieces of cut trim alongside goods or even food products packaged in the boxes. A18.

Mr. Simpson's cutting die 30 comprises a pair of rotary cylinders, a cutting cylinder 40 and an anvil cylinder 50. A23. Mounted on the cutting cylinder 40 is a die board or base 42. A11, 23. Typically the base 42 includes a combination of cutting blades, creasing or scoring rules, and resilient ejectors for ejecting scrap pieces that are cut from the product portion. A23. Disposed between the cutting cylinder 40 and the anvil cylinder 50 is a nip 80. The cutting and creasing operations performed on the product portion by the die 10 occur as the corrugated board CB passes through the nip 80.

Base 42 includes a series of trim blades that trim the edges of the corrugated board CB as it passes through the nip 80. As seen in Figure 1, the trim blades are the outer-most blades on the base 42, enclosing an area on the base. A51. Two sets of the trim blades are particularly discussed, blades 44 and 46. Trim blades 44 are referred to as leading trim blades because they trim the leading edge from the corrugated board CB. Trim blades 46 are referred to as trailing trim blades because they trim the trailing edge of the corrugated board CB. Although not specifically numbered, die 30 may include a pair of side trim blades that are disposed on opposite sides of the base 42 and which extend between the leading and trailing trim blades 44 and 46.

Trim blades 44 and 46 do little, if anything, to move the cut trim pieces 62 from the nip 80 and assure that the cut trim pieces are separated from the resulting product board. This is where Mr. Simpson's invention comes into play. Mounted on the die 10 is a series of trim strippers 10. The trim strippers 10 are located outside the trim blades 44, 46 and are positioned to engage the cut pieces of trim 62 that are cut by the trim blades from the corrugated board CB.

Structurally each trim stripper includes an angled outer surface. A25-28, 52, 56, 59. This angled outer surface is angled outwardly and away from the adjacent trim blade. A53. Further, the angled outer surface of the trim stripper extends outwardly past the height of the trim blade. That is, at least a portion of the angled outer surface is of a height greater than the height of the adjacent trim blade.

Mr. Simpson discloses three different embodiments for the trim stripper. One embodiment is shown in Figures 2A-3C, a second embodiment is shown in Figures 5-6, and a third embodiment is shown in Figure 10. A52, 56, 59. All three designs include an angled outer surface for engaging the trim pieces as the corrugated board CB moves through the die.

To illustrate the structure and operation of the trim stripper, reference is made to Figures 4A-4F, A53-55. Figure 4B illustrates the initial corrugated board CB being moved towards the nip 80 of the die. In Figure 4B the leading edge of the corrugated board CB has engaged the angled outer surface 12 of the trim stripper 10. Figure 4C shows the corrugated board CB and the trim stripper 10 advanced further. Here the trim stripper 10 is squarely within the nip 80. Trim cutting blade 44 has cut the trim piece 62. At the same time the trim stripper 10 has been compressed between the cut trim piece 62 and the base 42 of the die. Figure 4D shows the trim stripper 10 exiting the nip 80. At this position the trim stripper 10 has expanded and has pushed the cut trim piece 62 downwardly onto the urethane surface 52 of the anvil 50. In Figure 4E the cutting cylinder 30 and anvil 50 have rotated further. Still the trim stripper 10 is pushing the trim piece 62 downwardly onto the anvil 50. In Figure 4F, the cutting cylinder 30 and anvil 50 have rotated still further and the trim stripper 10 has now separated from the trim piece 62. But the downward force that the trim stripper 10 exerted on the trim piece 62 causes the trim piece 62 to remain in contact with the urethane surface 52 of the anvil 50. Therefore, as the anvil 50 continues to rotate from the position shown in Figure 4F, the cut trim piece 62 will remain in contact with the urethane surface 52 of the anvil 50,

and the anvil 50 will effectively propel the trim piece 62 downwardly and to the left as viewed in Figure 4F. Thus, the trim piece 62 is separated from the resulting and trailing product portion.

As noted above, disposed interiorly of the trim blades shown in Figure 1, Mr. Simpson's die 30 includes conventional cutting blades and scoring rules for cutting and scoring the resulting product board. Thus, between the leading trim blades 44 and the trailing trim blades 46, Mr. Simpson's cutting die 30 will cut and crease the corrugated product board in such a fashion that once the operation is complete, the cut and scored product board can be transformed into a corrugated box.

B. THE SMITHWICK PATENT

The Board held that Mr. Simpson's claimed invention is unpatentable under 35 U.S.C. §102 (e) as being anticipated by Smithwick, et al., A1-8. As the Court will note, Mr. Simpson is a co-inventor of the Smithwick patent. A76.

The Smithwick patent does not address the problem of moving cut trim pieces from the nip of a rotary cutting die. In particular, the Smithwick patent does not disclose or discuss any structure for engaging cut pieces of trim and directing the cut pieces of trim away from the nip of the rotary cutting die such that the cut pieces of trim do not become intermingled with

the resulting product board. The Smithwick patent is directed solely to what transpires interiorly of the trim cutting blades. A76-86.

Smithwick discloses a rotary cutting die 100 that includes a series of interior U-shaped cutting rules 112. These U-shaped cutting rules 112 operate on the resulting product portion - not the trim. Specifically, corrugated boxes are sometimes designed to include open slots in the flaps or tabs or hand holes in the sides. A84-85. Smithwick, column 1, line 14-20, column 3 lines 14-15. Contained interiorly within the U-shaped cutting rules 112 are scrap ejectors 10. Thus, as the product portion passes through the nip of the rotary cutting die 100, the U-shaped cutting rules 112 cut slots or holes in the product portion and the scrap ejectors 10 engage the corrugated material cut by the cutting rules 112 and eject the cut material from the product portion. The holes or slots cut by the U-shaped cutting rules 112 end up in the manufactured corrugated box.

Smithwick says nothing about cutting trim from the initial corrugated boards fed into the rotary cutting die 100. However, a review of the Smithwick drawings does reveal a surrounding trim blade. See Figure 2 of Smithwick, A78. In describing the cutting die 100, Smithwick refers to all of the cutting rules of the die with the numeral 112. That is, the U-shaped cutting rules that form the recesses 114 are referred to by 112 and the

outermost trim blades are also referred to by the numeral 112. In applying the Smithwick patent, the Board never said anything about the real trim blades. Instead, in attempting to read the trim blade limitations of Mr. Simpson's claims on Smithwick, the Board elected to maintain that the U-shaped cutting rules 112 constitute Mr. Simpson's claimed trim blades.

A3-4.

VI. SUMMARY OF THE ARGUMENT

An anticipation analysis by the Board should be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings. Claim interpretation is essential to an anticipation analysis and must be explicit, at least as to the disputed limitations.

Here the Board failed to construe the limitations of the claimed invention. Further the Board's analysis makes conclusionary findings and omits any analysis on several key limitations. Instead, the Board immediately engaged in a cursory exercise of reading the claims on the Smithwick reference without regard to the Simpson specification. In the process the meanings effectively ascribed to the claim terms were arbitrary, unreasonable and lacked support.

Mr. Simpson's claimed invention deals with cutting trim pieces from an initial corrugated board fed into a die. Mr. Simpson's die includes trim blades and trim strippers. The trim blades cut the trim from the outer edges of the initial corrugated board fed into the die and the trim strippers engage the cut trim pieces and urge them downwardly against an underlying, rotating anvil which shoots the cut trim pieces downwardly and away from the die. In this process, the cut trim pieces are separated from the resulting corrugated product board.

The allegedly anticipating Smithwick reference says nothing about moving and controlling the flight of cut trim pieces from a die. Smithwick does not include the claimed trim strippers. Nor does Smithwick discuss the claimed shape of the trim stripper or the claimed relationship between the trim stripper and the trim blade. To the contrary, the Smithwick reference discloses a cutting die that works on that portion of the corrugated board that is left after the trim has been cut and removed. That is, the Smithwick die cuts and scores the resulting product portion of the corrugated board to form it into a corrugated box. The Smithwick die does include a series of U-shaped cutting rules that cut slots or holes in the product portion or the corrugated board that forms the corrugated box. Within these U-shaped cutting rules there are scrap ejectors. The Board has maintained that the U-

shaped cutting rules are Mr. Simpson's claimed trim blade and that the scrap ejectors within Smithwick's U-shaped cutting rules are Mr. Simpson's trim strippers. That is error. It ignores the true meaning of such claim terms as trim, trim blade, and trim stripper.

Trim stripper, properly construed, means a stripping device particularly positioned on the cutting die to engage a cut piece of trim cut from the outer edge of an initial corrugated board fed into the die, and which pushes the cut trim piece away from an adjacent trim blade and separates the cut trim piece from the resulting trimmed product portion. When properly construed, the term trim stripper, as used in Mr. Simpson's claims, cannot be anticipated by the scrap ejectors of Smithwick.

Further, Mr. Simpson's claims calls for the trim stripper to include an angled outer surface. In claim 1, for example, it is provided:

the trim stripper including an angled outer stripper surface that is angled outwardly and away from the trim blade in such a fashion that at least a portion of the angled outer stripper surface extends outwardly past the height of the trim blade.

Here a special relationship is claimed between the outer angled surface of the trim stripper and the trim blade. This relationship is particularly seen in Figure 4A. A53. Even if the Smithwick ejectors 10 could be termed trim strippers, which they cannot, the angled sides 20 and 22 are not angled outwardly and away from the trim blade as claimed and as

illustrated in Figure 4A. A11, 53. As best as can be determined from Figure 2 of Smithwick, the sides 20, 22 of the lugs 16 simply extend transversely between the elongated segments of the U-shaped cutting rules 112.

VII. ARGUMENT

A. THE APPLICABLE STANDARD OF REVIEW

Anticipation is a question of fact. In order to uphold the Board's decision, there must be substantial evidence in the record to support the Board's finding. *In re Hyatt*, 211 F.3d 1367 (Fed. Cir. 2000). Implicit in this Court's review of the Board's anticipation analysis is that the claims must have been correctly construed to define the scope and meaning of each contested limitation. *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). Claim construction is a question of law and therefore reviewed de novo. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc) aff'd, 517 U.S. 370 (1996).

B. THE LAW OF ANTICIPATION

Under 35 U.S.C. §102, every element or limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990). Further, anticipation requires that the single prior art reference disclose every element of the claimed invention arranged in the same manner as claimed. *Lindemann*

Maschinenfabrik v. American Hoist & Derrick Co., 730 F.2d 1452, 1458

(Fed. Cir. 1984).

In determining if a claim is anticipated, it is fundamental that the claim first be correctly construed. That is, the scope and meaning of each contested limitation must be determined. *Gechter* at 1457 ; *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994). Thereafter, corresponding elements of the allegedly anticipating reference are identified. *Lindemann* at 1458. In the end, there can be no anticipation unless each and every element and limitation of the claimed invention, as properly construed, is found in the single prior art reference.

C. THE CLAIMED INVENTION IS NOT ANTICIPATED BY SMITHWICK

Mr. Simpson's invention is directed to a rotary cutting die for cutting corrugated board. The cutting die is particularly designed to cut and trim an initial blank corrugated board fed into the die. Mr. Simpson's die cutter includes as least one trim blade for cutting a narrow edge around the corrugated board fed into the die. Mr. Simpson's cutting die is further provided with one or more trim strippers. The trim strippers are disposed outside of the trim blades and act to engage the cut pieces of trim as the trim blade and trim strippers pass through the nip of the cutting die. A53-54. The trim stripper is compressed in the nip, and as the trim stripper passes out

of the nip, the trim stripper expands and propels the cut piece of trim downwardly. A54-55. This separates the cut pieces of trim from the resulting product portion.

Smithwick does not even address the trim problem. In short, the Smithwick patent does not disclose trim strippers for engaging and moving the cut pieces of trim away from the die and separating the cut pieces of trim from the resulting product portion. Smithwick deals only with cutting and scoring the product portion, that is, that portion of the corrugated board that is left after the trim is cut from around its edges.

1. The Board Failed to Construe the Claims or Alternatively, If the Claims Were Construed By Implication They Were Improperly Construed.

There is no claim construction analysis found in the Board's opinion. A1-7. Nowhere does the Board explicitly analyze a single claim term for its meaning. That is error. *Lindermann*, 730 F.2d at 1458. Unquestionably the dispute in this case revolves around the meaning of trim, trim blade, trim stripper, and other terms relating to how the trim strippers act on the cut trim pieces. Instead of first proceeding with a claim construction analysis, the Board elected to simply attempt to read the claims on Smithwick. As a result, the Board, in a cursory fashion, arbitrarily equated each and every element of the claimed invention with some element in the Smithwick

patent. This was done without regard to Mr. Simpson's specification, the prosecution history, or how a person of ordinary skill in the art would have interpreted the terms at issue. The errors of the Board are clear.

Claim 1 recites:

A rotary cutting die for cutting corrugated board and trimming an outside trim piece from the corrugated board so as to yield a product portion comprising:

- (a) a base adapted to be mounted to a rotary cylinder;
- (b) at least one trim cutting blade secured to the base and extending outwardly therefrom for trimming an outside trim piece from a sheet of corrugated board; and
- (c) at least one trim stripper mounted outside the trim cutting blade for engaging the trim piece and stripping the trim piece from the product portion, the trim stripper including an angled outer stripper surface that is angled outwardly and away from the trim blade in such a fashion that at least a portion of the angled outer stripper surface extends outwardly past the height of the trim blade.

A11.

First, with respect to claim 1, the finding of anticipation is based on a series of errors. First, the Board found that the element "trim blade" was met by Smithwick's U-shaped cutting rules 112 that define the recesses 114.

A3,A78. This is error for several reasons. The Board either ignored the meaning of "trim blade" or simply failed to determine its meaning. Under any relevant canon of claim construction, the meaning of trim in Mr. Simpson's claims is crystal clear. Throughout the specification, trim refers

to an outer edge portion cut from the initial corrugated board CB. A27-32; 53-55. As seen in Figure 4E-4F, the trim, after being cut from the corrugated board CB is identified by the numeral 62. A53-55. Throughout the specification, the term trim, or sometimes trim scrap, is used to denote an edge portion of the initial corrugated board CB that is cut or trimmed from the corrugated board, leaving a product portion or a product board. See, for example, the preamble of claim 1 where the trim is defined as the outside trim piece trimmed from the corrugated board that yields the product portion. A11, 24. (It should be noted that the preamble of claim 1 is limiting. This is because the preamble gives life and meaning to the body of the claim since the term product portion is referred to in both the preamble and the body). Once the product portion is formed, the trim has been cut and separated and is no longer an issue. While Mr. Simpson's specification is clear as to the meaning of trim, it should be noted that Mr. Simpson has also used the word trim as it is used and understood in the corrugated board art, and as it is used and understood by those skilled in the art.

Given that meaning of trim, "trim blade" simply means a blade for cutting the trim. The Board did not attempt to construe the term trim or trim blade. There was absolutely no analysis as to what the term trim or trim blade means. As far as the Board was concerned, trim was simply any part

of the corrugated board. A4-5. This led the Board to find and conclude that the U-shaped cutting rules in the Smithwick die anticipated Mr. Simpson's claimed trim blades. The U-shaped cutting rules 112 that defines the recesses 114 in Smithwick are not trim blades. They are not trim blades because they do not cut trim. To the contrary, the U-shaped cutting rule 112 in Smithwick operates on the product portion of the corrugated board, again that portion that results after the trim has been cut from around the initial corrugated board. Smithwick is clear on the function of the U-shaped cutting rules 112. These cutting rules only form slots or holes in the finished corrugated box. Smithwick, column 3 lines 14-15, A85. They do not cut trim.

Interestingly, Smithwick does in fact disclose trim blades. They happen not to be the U-shaped cutting rules referred to by the Board. A3. In Figure 2 of Smithwick, the outermost, generally rectangular ring of blades, also numbered 112, are the real trim blades. A78. Although Smithwick does not discuss dealing with the trim and does not particularly describe these blades, those skilled in the art would readily understand that these blades are the trim blade and are used to cut trim from the initial corrugated board fed into the die. The Examiner and the Board elected not to use the real trim blades in formulating the anticipation rejection. This is because

Smithwick does not show trim strippers in association with the real trim blades or any other structure for engaging and moving cut trim pieces from the die.

Further, the trim blade of claim 1 is limited to “trimming an outside trim piece from a sheet of corrugated board”. The U-shaped cutting rules do not meet this limitation because they do not trim an outside trim piece from the sheet of corrugated board. Rather, as discussed above, these U-shaped cutting rules operate on the product portion after the trim pieces have been cut and removed, and in fact function to cut holes and slots, just as the Board noted, in the finished product portion. A3. The cut-outs made by the U-shaped rules 112 in Smithwick cannot be equated to the trim pieces. Based on Mr. Simpson’s specification, trim in the sense of corrugated box manufacturing, is not the same as material cut from the corrugated container itself to form slots or holes. Cutting and removing trim, contrasted with forming slots or holes in the corrugated box itself, involves a different process that is performed by a different structure on the cutting die.

The Board, without a claim interpretation analysis, reads Mr. Simpson’s trim stripper on Smithwick’s ejectors 10 that are confined within the U-shaped cutting rules 112. This is perhaps the most glaring error made by the Board.

A proper claim construction here would have avoided this error.

Based on the specification, including the drawings, the term trim stripper, properly construed, means a stripper device particularly positioned on a cutting die to engage a cut piece of trim cut from the outer edge of an initial corrugated board fed into the die, and which pushes the cut piece of trim away from the trim blade and separates the cut piece of trim from the resulting trimmed product portion. That is a fair and proper construction of the term trim stripper. Under that construction, it is clear that the ejectors 10 of Smithwick cannot anticipate.

Smithwick's ejectors 10 have nothing whatsoever to do with stripping cut pieces of trim from the die. Smithwick's ejectors operate on the product portion of the corrugated board after the trim has been cut.

Claim 1 also includes the limitation that the trim stripper is mounted outside the trim cutting blade. The Board does not construe the "outside" limitation. Instead, the Board rationalizes as follows:

As for the limitation in claim 1 that the trim stripper be mounted outside the trim cutting blade, we note, as the examiner has (Answer, p. 3), that claim 1 does not provide any reference for defining which side of the blade is the outside. Thus, from our perspective, either side of the u-shaped cutting rule 112 may be viewed as the outside. In any event, in that the scrap ejectors 10 are disposed on the sides of the u-shaped cutting rules 112 which falls outside of the area defined in the final product (a rectangular board having slots cut therein), each of the scrap ejectors 10 is mounted outside a trim cutting blade (u-shaped cutting rule) as called for in the claim. As for appellant's contention

that the strip scrap cut from the board to form a slot is not an outside trim piece, we perceive nothing in the strip scrap removed by the scrap ejector 10 of Smithwick which distinguishes it from an “outside trim piece” (*i.e.*, a piece of material which is trimmed off the board from an exterior edge thereof.)

(footnote omitted) A4-5.

The Board maintains that either side of the U-shaped cutting rule 112 may be viewed as the outside. Such an interpretation simply eviscerates the term “outside,” and effectively writes it out of the claim altogether. If “either side” of an item may be viewed as the outside, then the item has no inside or outside. Neither the Examiner nor the Board is free to simply ignore explicit claim limitations. The term “outside” is manifestly present in claim 1, and it must be construed.

The term “outside” should be given its ordinary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (citing extensive precedent of reference to dictionary definitions to construe disputed claim terms). Webster defines “outside” as a place or region beyond an enclosure or boundary, or as being on or towards the outer side or surface.² As shown in Figure 1 of the ‘564 application, the trim blades 44, 46 define an enclosure or boundary. A51. The interior of the boundary formed by the trim blades defines the product portion of the corrugated

² *Merriam Webster's Collegiate Dictionary* 826, 827 (10th ed. 1993).

board CB, *i.e.*, that which will be formed into a corrugated box. Conversely, the exterior of the boundary formed by the trim blades defines the trim, which the trim blades cut from the outer edge(s) of the corrugated board CB and which is discarded. Figure 1 additionally depicts the trim strippers 10, and clearly shows that the trim strippers are disposed exterior to the boundary formed by the trim blades. A51. That is, the trim strippers are disposed outside of the trim cutting blades.

Considering Smithwick, the U-shaped cutting rules 112 cannot be deemed trim blades. Assuming *arguendo* that they could, however, the ordinary meaning of “outside” compels the conclusion that the scrap ejectors 10 are disposed inside of the cutting rules 112. Each of the U-shaped cutting rules 112, together with the exterior cutting rule 112 abutting it, defines an enclosure or boundary – the cavity or recess 114. Smithwick’s scrap ejector 10 is obviously disposed within the cavity 114, *i.e.*, inside of the U-shaped cutting rule 112. The Board rationalized its strained conclusion that the cavity 114 is the outside of the U-shaped cutting rule 112 by saying it falls “outside the area defined by the final product.” This is like saying a donut hole is the outside of the donut.

The Board further notes that it sees no distinction between the material cut by the Smithwick U-shaped cutting rules 112 and the trim cut

by Mr. Simpson's trim blades. Mr. Simpson does not claim the material cut from the corrugated board CB; he claims an apparatus and process for cutting trim and for stripping the trim from the product portion of the corrugated board CB. That the cut trim may be similar to – indeed, if it is identical to – a different piece of material cut and stripped from a different part of the corrugated board by a different part of the die, is irrelevant to whether Smithwick anticipates claim 1. It is the recitation of apparatus claim 1 (properly construed) that must be compared to the apparatus disclosed in Smithwick. According to the ordinary meaning of "outside," Smithwick fails to meet the limitation of claim 1 that the trim stripper is disposed outside the trim cutting blade.

Additionally, claim terms must be construed as they would be understood by those of ordinary skill in the art. As those skilled in the art would appreciate, the trim strippers must necessarily be outside of the trim blades. Otherwise they cannot engage the cut pieces of trim and separate the cut trim from the resulting product portion.

Finally, claim 1 calls for the trim stripper to include "an angled outer stripper surface" that is "angled outwardly and away from the trim blade". In one embodiment, the angled outer stripper surface is surface 12 referred to in figures 2A-3C, A52. Note in figure 4A where the angled outer surface

12 is angled outwardly and away from the trim blade 44. A53. Again, the Board did not construe these terms. The Board concluded in viewing Smithwick that “each scrap ejector 10 includes a plurality of lugs 16 having a pair of angled sidewalls 20, 22 which extend radially outwardly to the outer contact surface of 24.” A3. In Smithwick, it is the outer flat - not angled - contact surface 24 that engages and ejects the material cut by the U-shaped cutting rules 112. The angled sides 20 and 22 simply form a part of the lug and do not meet the limitations set forth in claim 1. The angled sides 20 and 22 are certainly not an “angled outer stripper surface.”

It is difficult to imagine how the Board found anticipation here. What’s at issue is the shape of the trim stripper and its relationship to the adjacent trim blade. This special relationship is exemplified in Figure 4A. A53. Note how the angled outer stripper surface 12 is angled outwardly and away from the adjacent trim blade 44. Smithwick does not disclose this relationship between the sides 20, 22 and the U-shaped cutting rules 112.

Figure 2 of Smithwick is the only disclosure showing the relationship between the ejector 10 and the U-shaped cutting rules 112. A78. Mr. Simpson fails to see how the angled sides 20 and 22 of the ejector 10 are angled outwardly and away from any adjacent blade. The angled sides 20 and 22 extend generally transversely between the elongated components of

the U-shaped cutting rules. Sides 20, 22 are not angled outwardly and away from the cutting rules 112 as called for in claim 1. That is, the sides 20, 22 do not extend outwardly and away from the cutting rules 112 like the trim stripper surface 12 shown in Figure 4A. A53. Here the stripper surface 12 extends parallel with the trim blade 44, but at the same time is angled outwardly from the base and away from the trim blade. In Smithwick, sides 20, 22 extend transversely or at a 90° angle with respect to the cutting rules 112 and do not extend outwardly and away from the cutting rules 112 at an angle. The Board failed to consider the part-to-part relationship between the claimed trim stripper and the adjacent trim blade. See *Lindermann*, 730 F.2d at 1459. Smithwick does not anticipate the claimed relationship between the trim stripper and the trim blade.

Claim 3 provides:

The rotary cutting die of claim 1 wherein the cutting die is adapted to work in conjunction with a rotary anvil to trim a corrugated board sheet passing through a nip area formed between the rotating cutting die and anvil, and wherein the angled outer surface of the trim stripper acts to engage a leading edge of the corrugated board sheet as it enters the nip area and further the outer angled surface of the trim stripper contacts and holds one or more cut pieces of trim scrap against the anvil as the cut trim scrap exits the nip so as to cause the trim scrap to be directed generally downwardly by the anvil as the anvil transfers the cut trim scrap away from the nip area.

A12.

Claim 3 is limited to a cutting die where the angled outer surface of the trim stripper acts to engage a leading edge of the corrugated board sheet. Again, this is illustrated in figure 4B, A53. The ejector 10 in Smithwick only engages the product portion, that is the portion after the leading edge has been trimmed from the initial corrugated board. Further, claim 3 is limited to where the outer angled surface of the trim stripper contacts and holds one or more cut pieces of trim scrap against the anvil as the cut trim exits the nip. These limitations were neither considered nor addressed by the Board, and are not found in the Smithwick patent.

Claim 28 is a method claim and recites:

A method of controlling and managing an outside trim piece cut from a sheet of corrugated board passing between a rotary cutting die and a rotating anvil comprising:

- (a) directing the sheet of corrugated board between the rotary cutting die and the rotating anvil;
- (b) engaging an outside trim edge portion of the sheet with an angled outer surface of a trim stripper carried by the cutting die and disposed outside a trim blade;
- (c) cutting the outside trim edge portion of the corrugated board sheet with the trim blade while compressing the trim stripper between the cutting die and the trim edge portion being cut as the corrugated board passes between the cutting die and the anvil; and

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- (d) releasing the trim stripper as the trim stripper and cut trim edge portion pass through a nip defined between the anvil and the cutting die causing the angled outer surface of the trim stripper to expand outwardly and engage the cut trim edge portion and strip the cut trim edge portion from the trim blade.

A15.

The test for anticipation is the same for both apparatus and method claims. In the case of a method or process, anticipation requires that each step of the claimed method or process be disclosed or embodied in a single reference. *Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). Arguments advanced above with respect to the apparatus claims are equally applicable here. As with the apparatus claims, the Board engaged in no claim interpretation. Instead, the Board attempted to read the method steps of claim 28 on Smithwick without regard to the actual method taught by Mr. Simpson's specification and without regard to how the terms in the method claims would be understood by those ordinarily skilled in the art.

Claim 28 is directed to a method for engaging and controlling the movement of trim pieces cut from a corrugated board. As stated earlier, Smithwick focuses entirely on a corrugated sheet after the trim has been cut therefrom. Indeed, the Smithwick patent does not appear to mention the word trim at all. Nor does the Smithwick patent discuss the problems

associated with controlling cut pieces of trim, or even discuss any means for engaging and separating the cut pieces of trim from the finished corrugated boxes manufactured by the cutting die.

More specifically, claim 28 is directed to engaging an outside trim edge portion of the corrugated sheet with an angled outer surface of a trim stripper carried by the cutting die and disposed outside a trim blade. Further, claim 28 calls for compressing the trim stripper between the cutting die and the trim edge portion being cut as a corrugated board passes between the cutting die and the anvil. See figure 4C, A54. Smithwick does not disclose a trim stripper and accordingly, does not engage an outside trim edge portion of the corrugated sheet with a trim stripper. Of course, Smithwick does not compress the trim stripper between the cutting die and the trim edge portion being cut.

Finally, claim 28 calls for releasing the trim stripper, after it has been compressed, as the trim stripper and cut trim edge portion pass through the nip, causing the angled outer surface of the trim stripper to expand outwardly and engage the cut trim edge portion and strip the cut trim edge portion from the trim blade. Of course, if Smithwick does not even disclose dealing with the cut trim pieces, it follows that Smithwick cannot anticipate releasing the compressed trim stripper and causing the angled outer surface

of the trim stripper to expand outwardly and engage the cut trim portion and strip the cut trim portion from the trim blade. Clearly, Smithwick does not anticipate these method steps of claim 28.

The Board's treatment of claim 28 is conclusory, brief and borders on being superficial. A6. The Board does not appreciate the process of trimming an initial blank corrugated board. Implicit in this, is that the Board fails to understand and appreciate the claimed invention. Fundamentally, Mr. Simpson's invention and the Smithwick patent are directed to two different aspects of making a corrugated box. Mr. Simpson's invention is directed at cutting, controlling and managing trim pieces that are cut from the initial feed stock. Smithwick is concerned with cutting holes and slots in the corrugated box and ejecting the corrugated scrap from these holes or slots. While both processes are performed on a cutting die, they are performed by different parts of the cutting die. The processes are not the same.

2. The Board's Failure to Properly Construe the Terms Trim, Trim Blade, Trim Stripper and Other Related Terms Compels That the Board's Decision Be Reversed.

The law is clear. Anticipation cannot be determined in the absence of a claim interpretation analysis. It is fundamental that the Board must identify the elements of the claims, determine their meaning in light of the

specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference. *Lindermann*, 730 F.2d at 1458. This Court has stated:

We expect that the Board's anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings. Claim construction must also be explicit,

Gechter, 116 F.3d at 1460. (footnote omitted).

There can be no doubt that the Board in this case did not conduct a thorough claim interpretation analysis. The Board failed to construe key disputed terms including trim, trim blade, and trim stripper, as well as other related terms in the claims.

Rather, the Board treated the claims as a mere catalog of parts. Effectively, the Board ascribed meanings to these terms that were superficial and which failed to reflect their proper meaning as evidenced in the specification and the drawings. In the end, the Board simply concluded that Smithwick showed a rotary cutting die having a resilient scrap ejector for ejecting scrap, and thereafter rationalized a way of reading Mr. Simpson's claims on Smithwick. Of course, Mr. Simpson's claimed invention is much more than a rotary die having a resilient scrap ejector.

If these terms are construed under appropriate rules of claim construction, it becomes abundantly clear that there is no anticipation in this

case. Specifically, if the terms and phrases at issue are construed in harmony with Mr. Simpson's written description, it is clear that his claims are not anticipated. *Atlantic Thermoplastics Co. v. Faytex Corp.* 970 F.2d 834 (Fed. Cir. 1992), *reh'g in banc denied* (the procedure of giving terms their broadest reasonable interpretation does not relieve the PTO of its essential task of examining the entire disclosure to determine the meaning of words and phrases in claims). See also *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990) (terms and phrases in a claim must be interpreted consistently with the interpretation that would be given by one skilled in the art).

Finally, what the applicant states the claims to mean is vital to an analysis of patentability. During prosecution before the Patent Office, Mr. Simpson amplified on the specification and explained his invention as follows:

First, the present invention is aimed totally at a trim stripper for a rotary cutting die that cuts corrugated board. It is important to appreciate that the present invention deals with cutting and removing a trim edge from a blank corrugated board being fed into the die. That is, the present invention deals with taking a blank corrugated board and trimming one or more of the outer edges so as to produce what is referred to as the product board. That is, the blank corrugated board is trimmed around outer portions so as to leave the product board. The product board is then internally cut, creased and scored to form the corrugated board product that becomes the corrugated container, for example.

A91.

Statements in the prosecution history such as that referred to above should not be ignored. They are important because when the applicant states the meaning that the claims are intended to have, the claims should be analyzed with that meaning, “in order to achieve a complete exploration of the applicant’s invention and its relation to the prior art.” *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989).

3. Even if the Claims Are Given Their Broadest Reasonable Interpretation, They Still are Not Anticipated by Smithwick.

Mr. Simpson recognizes that the Patent Office may give claims their broadest reasonable interpretation. *Id.* at 321. As the rule specifically provides, the meaning given must be reasonable. As discussed above, the Board’s treatment of Mr. Simpson’s claims is unreasonable. Importantly, the broadest reasonable interpretation must be consistent with the specification and prosecution history. That is, the Board is not relieved of the essential tasks of examining the entire specification to discern the meaning of words and phrases in the claims. *Rowe v. Dror*, 112 F.3d 473, 480 (Fed. Cir. 1997); *In re Bulloch*, 604 F.2d 1362, 1365 (CCPA 1979) (claims are interpreted by viewing the specification and record to discern what the applicant claimed).

The Board’s opinion is entirely devoid of any reference to Mr. Simpson’s drawings or specifications. Nowhere in the Board’s decision

does it attempt to discern from the specification the meaning of trim, trim blade, trim stripper, outside and related words and phrases. Indeed, there is not one single reference to Mr. Simpson's specification or even the drawings in the Board's decision.

The claims are limited to a corrugated board cutting die that includes trim strippers for controlling the movement of pieces of trim cut from an initial corrugated board fed into the die. Specifically, the claims require a trim stripper that is disposed outside of the trim blade and which strips the pieces of cut trim from the trim blades.. Moreover the claims require that the trim stripper be positioned outside of the true trim blade. As alluded to before, the Smithwick patent does not show such a cutting die. Smithwick is focused entirely on operating on the corrugated board that is left after it has been trimmed. No amount of imagination and contortion can make the U-shaped cutting rules 112 and the ejector 10 of Smithwick equate to the trim stripper and trim blades of Mr. Simpson's claimed invention. In order to anticipate, the Smithwick patent must describe Mr. Simpson's claimed invention sufficiently to have placed a person of ordinary skill in the art in possession of the claimed invention. See *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). Clearly a person of ordinary skill in the art viewing the

Smithwick patent would not be in possession of Mr. Simpson's claimed invention.

4. The Record Shows that Mr. Simpson's Claimed Invention is Not Anticipated by Smithwick.

While anticipation is a question of fact, *In re Bond* at 833, the Board's decision is fatally flawed and should not be affirmed for several reasons. First, the claims were not interpreted. Even if it can be maintained that they were interpreted by implication, the interpretation is grossly wrong. This Court reviews claim interpretation *de novo*, and should, as a matter of law, construe the claims. Once correctly construed, the claims will not be anticipated by Smithwick. There is simply no substantial evidence in the record that supports a finding of anticipation. In short, there is nothing in the record that supports the proposition that each and every element and limitation of Mr. Simpson's claims is found in the Smithwick patent.

VIII. CONCLUSION

For the foregoing reasons, the decision of the Board should be reversed and claims 1, 3, 5, 8, 9, 28 and 29 found not to be anticipated by Smithwick.

Respectfully submitted,

By:

Larry L. Coats
Larry L. Coats
Edward H. Green, III
COATS & BENNETT
1400 Crescent Green, Suite 300
Cary, North Carolina 27511
(919) 854-1844

Counsel for Appellant

Dated: September 30, 2002

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 30th day of September, 2002, two bound copies of the foregoing Brief of Appellant was served via first-class mail, postage prepaid, addressed to the following:

William G. Jenks
Office of the Solicitor
P.O. Box 15667
Arlington, Virginia 22215

I also certify that on this 30th day of September, twelve (12) bound copies of the Brief of Appellant were hand filed at the Office of the Clerk, United States Court of Appeals for the Federal Circuit.

The necessary filing and service to Counsel were performed in accordance with the instructions given me by counsel in this case.

Larry L. Coats

Larry L. Coats
COATS & BENNETT
1400 Crescent Green, Suite 300
Cary, North Carolina 27511
(919) 854-1844

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned certifies that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. Proc. 32(a)(7)(B)(iii), this brief includes 8,047 words.
2. This brief has been prepared in proportionally spaced typeface Microsoft Word 97 in 14 point Times New Roman font. As permitted by Fed. R. App. Proc. 32(a)(7)(C), the undersigned has relied upon the word count of this word-processing system in preparing this certificate.

Dated: September 30, 2002

Tony J. Lutz

Counsel for Appellant

ADDENDUM

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK RICHARD SIMPSON

Appeal No. 2001-0312
Application No. 09/054,564

ON BRIEF

Before ABRAMS, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-44. Appellant filed an amendment (Paper No. 11) subsequent to the final rejection canceling claims 36-44. Despite the examiner's statement on page 2 of the answer (Paper No. 15) that "[n]o amendment after final has been filed," we interpret the examiner's acknowledgment of "[t]he cancellation of claims 36-44 in paper no. 11" in a second Notification of Non-Compliance with 37 CFR § 1.192(c) (Paper No. 12) as an

indication that the amendment canceling claims 36-44 has been approved for entry.¹ Thus, the examiner having withdrawn the rejection of claims 2, 4, 6, 7, 10-27 and 30-35, the only claims remaining before us on appeal are claims 1, 3, 5, 8, 9, 28 and 29.

BACKGROUND

The appellant's invention relates to corrugated board rotary cutting dies and the stripping of scrap therefrom, and more particularly to a stripping member for efficiently and effectively directing scrap away from an edge trimming cutting die (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief² (Paper No. 13).

The examiner relied upon the following prior art reference in rejecting the appealed claims:

Smithwick, Jr. et al. (Smithwick) 5,636,559 Jun. 10, 1997

Claims 1, 3, 5, 8, 9, 28 and 29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Smithwick.

¹ We note, however, that the amendment canceling claims 36-44 has not been clerically entered.

² Any references to the appellant's brief in this decision are to the corrected appeal brief filed May 30, 2000 (Paper No. 13).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer for the examiner's complete reasoning in support of the rejection and to the brief for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the Smithwick patent, and to the respective positions articulated by the appellant and the examiner. As a consequence of this review, we make the determinations which follow.

Claim 1 reads on the Smithwick cutting die as follows. Smithwick discloses a rotary die cutter 100 for cutting corrugated board comprising a base (die board 110) formed into an arcuate shape and adapted to be mounted to a rotary cylinder (die roll 102), at least one trim cutting blade (the U-shaped cutting rule 112 defining a recess 114) secured to the die board and extending radially outwardly therefrom for trimming an outside trim piece (strip scrap) from the sheet of corrugated board to form a slot, and at least one trim stripper (scrap ejector 10) for engaging and stripping the strip scrap, by holding the scrap against an anvil cylinder 104 (column 3, lines 64-66). As illustrated in Figures 2 and 3, each scrap ejector 10 includes a plurality of lugs 16 having a pair of angled side walls 20, 22 which extend radially outwardly to an outer contact face 24,

one of the side walls being angled outwardly and away from the cutting rule 112.

Further, as explained in column 3, lines 55-58, "[t]he height of the scrap ejector 10 is such that the outer faces 24 extend beyond the cutting edges of the rule 112 to ensure proper ejection of the scrap."

Appellant argues on page 6 of the brief that the scrap ejectors are all positioned inside of the trim blade and as such function only to eject scrap cut from interiorly of the product sheet disposed inside the trim blade. As for the limitation in claim 1 that the trim stripper be mounted outside the trim cutting blade, we note, as the examiner has (answer, page 3), that claim 1 does not provide any reference for defining which side of the blade is the outside. Thus, from our perspective, either side of the U-shaped cutting rule 112 may be viewed as the outside. In any event, in that the scrap ejectors 10 are disposed on the sides of the U-shaped cutting rules 112 which fall outside of the area defining the final product (a rectangular board having slots cut therein)³, each of the scrap ejectors 10 is mounted outside a trim cutting blade (U-shaped cutting rule) as called for in the claim. As for appellant's contention that the strip scrap cut from the board to form a slot is not an "outside trim piece," we perceive nothing in the strip scrap removed by the scrap ejector 10 of Smithwick which distinguishes it from an "outside

³ In this respect, we observe that the final product is defined by the cutting rules forming a rectangular shape in combination with the U-shaped cutting rules forming the slots, not merely by the rectangular shape alone.

"trim piece" (i.e., a piece of material which is trimmed off the board from an exterior edge thereof).

For the foregoing reasons, appellant's arguments do not persuade us of any error in the examiner's determination that the subject matter of claim 1 is anticipated by Smithwick. Thus, we shall sustain the examiner's rejection of claim 1, as well as claim 5⁴ which appellant groups therewith (brief, page 4), as being anticipated by Smithwick.

Claim 8 depends from claim 1 and further requires that the trim stripper include two separate angled upper surfaces that enable the trim stripper to be reversed.

Appellant asserts (brief, page 9) that "[c]learly, the individual lugs of Smithwick cannot be reversed," but provides no evidence or explanation as to why this is the case.

Based on our review of the scrap ejectors 10 disclosed in column 3, lines 30-34, and illustrated in Figures 2 and 3, Smithwick's scrap ejectors appear fully capable of being reversed if desired. Thus, the examiner's position in this regard appears quite reasonable to us. Accordingly, we shall sustain the rejection of claim 8, as well as claim 9 which appellant has grouped therewith (brief, page 4).

⁴ While the limitation of a durometer of "approximately 30-60" in claim 5 finds support in the claim as originally filed, there is an inexplicable inconsistency between the durometer recitation of claim 5 and the "70 to 100 durometer" disclosed on page 10 of appellant's specification. Accordingly, in the event of further prosecution, the examiner may wish to consider whether claim 5 is definite under the second paragraph of 35 U.S.C. § 112. See In re Cohn, 438 F.2d 989, 993, 169 USPQ 95, 98 (CCPA 1971).

Turning now to the method of claim 28, Smithwick discloses directing sheet material such as corrugated paper board between an upper die roll 102 and a lower anvil roll 104 (column 2, lines 61-64), engaging a strip scrap with a scrap ejector 10 (column 3, lines 64-66), and cutting the strip scrap with the U-shaped cutting rule 112 while compressing the scrap ejector between the die roll 102 and corrugated paper board as the board passes between the die roll 102 and the anvil roll 104 (column 3, lines 58-62). The scrap ejector holds the scrap against the anvil by being released and expanded, after passing through the nip, so as to extend outwardly beyond the cutting edges of the rule 112.

Appellant's arguments on page 11 of the brief that the scrap ejector of Smithwick is not disposed outside a trim blade and does not include an angled outer surface are not found persuasive for the reasons discussed above with regard to claim 1. Further, for the reasons discussed above, we consider the strip scrap discussed by Smithwick to be a "cut trim edge portion" and thus conclude that Smithwick teaches a procedure for stripping a cut trim edge portion from the trim blade as called for in claim 28.

Inasmuch as appellant's arguments are not persuasive of error in the examiner's determination that claim 28 is anticipated by Smithwick, we shall also sustain the examiner's rejection of claim 28, as well as claim 29 which appellant has grouped therewith (brief, page 5).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3, 5, 8, 9, 28 and 29 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



NEAL E. ABRAMS
Administrative Patent Judge

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BOARD OF PATENT
APPEALS
AND
INTERFERENCES



JEFFREY V. NASE
Administrative Patent Judge

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JENNIFER D. BAHR
Administrative Patent Judge